



## **COMMODITY FUTURES TRADING COMMISSION**

### **17 CFR Part 23**

### **RIN 3038-AE17**

#### **Definitions of “Portfolio Reconciliation” and “Material Terms” for Purposes of Swap Portfolio Reconciliation**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission (“Commission” or “CFTC”) is amending its regulations in connection with the terms for which counterparties must exchange and resolve discrepancies when engaging in portfolio reconciliation.

**DATES:** The final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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## **SUPPLEMENTARY INFORMATION:**

### **I. Proposed Rule**

Under § 23.502 of the Commission’s regulations,<sup>1</sup> swap dealers (“SD”) and major swap participants (“MSP”), as defined in § 1.3 of the Commission’s regulations, must reconcile their swap portfolios with one another and provide non-SD and non-MSP counterparties with regular opportunities for portfolio reconciliation.<sup>2</sup> Section 23.500(i)<sup>3</sup> defines the term “portfolio reconciliation” as any process by which the two parties to one or more swaps: (1) exchange the terms of all swaps in the swap portfolio between the counterparties; (2) exchange each counterparty’s valuation of each swap in the swap portfolio between the counterparties as of the close of business on the immediately preceding business day; and (3) resolve any discrepancy in material terms and valuations. Section 23.500(g) defines “material terms” to mean all terms of a swap required to be reported in accordance with part 45 of this chapter.<sup>4</sup>

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<sup>1</sup> 17 CFR 23.502.

<sup>2</sup> 17 CFR 23.502; see Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55904 (Sept. 11, 2012) (“Portfolio Reconciliation Final Rule”) at 55926.

<sup>3</sup> 17 CFR 23.500(i).

<sup>4</sup> 17 CFR 23.500(g). Part 45 of the Commission regulations governs swap data recordkeeping and reporting requirements. The swap terms that must be reported under part 45 are found in appendix 1 to part 45. See 17 CFR part 45, App. 1; see also 17 CFR 45.1 (defining “primary economic terms” as all of the terms of a swap matched or affirmed by the counterparties in verifying the swap, including at a minimum each of the terms included in the most recent Federal Register release by the Commission listing minimum primary economic terms for swaps in the swap asset class in question and stating that the current list of minimum primary economic terms is in appendix 1); Swap Data Recordkeeping and Reporting Requirements, 77 FR 2197 (Jan. 13, 2012) (promulgating the list of primary economic terms). Examples of primary economic terms include the price of the swap, payment frequency, type of contract (e.g., a “vanilla option” or “complex exotic option”), execution timestamp, and, if the swap is a multi-asset class swap, the primary and secondary asset classes. 17 CFR part 45, App. 1.

On September 22, 2015, the Commission proposed to amend the definition of “material terms” in § 23.500(g) to exclude nine specific data fields (the “Proposal”).<sup>5</sup> It was then—and remains so now—the intention of the Commission to alleviate the burden of resolving discrepancies with respect to a swap that are not relevant to the ongoing rights and obligations of the parties and the valuation of the swap without impairing the Commission’s regulatory mission.<sup>6</sup> The nine excluded data fields from the Proposal (hereinafter referred to as the “Proposed Excluded Data Fields”) are:

1. An indication that the swap will be allocated;
2. If the swap will be allocated, or is a post-allocation swap, the legal entity identifier<sup>7</sup> of the agent;
3. An indication that the swap is a post-allocation swap;
4. If the swap is a post-allocation swap, the unique swap identifier;<sup>8</sup>
5. Block trade indicator;
6. With respect to a cleared swap, the execution timestamp;
7. With respect to a cleared swap, the timestamp for submission to swap data repository (“SDR”);
8. Clearing indicator; and

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<sup>5</sup> Proposal to Amend the Definition of “Material Terms” for Purposes of Swap Portfolio Reconciliation, 80 FR 57129, Sept. 22, 2015. The Commission’s Division of Swap Dealer and Intermediary Oversight had previously provided SDs and MSPs with no-action relief stating it would not recommend an enforcement action against an SD or MSP that omits eleven specific data fields from the portfolio reconciliation process required under § 23.502. See CFTC Letter 13-31 (June 26, 2013).<sup>5</sup>

<sup>6</sup> See the Proposal, 80 FR at 57131.

<sup>7</sup> A legal entity identifier is a 20-digit, alpha-numeric code, to uniquely identify legally distinct entities that engage in financial transactions. See Legal Entity Identifier Regulatory Oversight Committee, <http://www.leiroc.org/>; 17 CFR 45.6.

<sup>8</sup> A unique swap identifier is a unique identifier assigned to all swap transactions which identifies the transaction (the swap and its counterparties) uniquely throughout the duration of the swap’s existence. See 17 CFR 45.5.

9. Clearing venue.<sup>9</sup>

In the Proposal, the Commission asked for comments on a number of issues related to the appropriate scope of portfolio reconciliation. For example, the Commission asked for comment on whether counterparties should only have to exchange the “material terms” of swaps or whether counterparties should be required to exchange all terms of swaps (material or not).<sup>10</sup> The Commission also sought comment concerning, among other things, whether additional data fields should be excluded from portfolio reconciliation exercises.<sup>11</sup>

## **II. Summary of Comments**

In response to the Proposal, the Commission received four comments.<sup>12</sup> All of the commenters supported going further than the Proposal by, for example, allowing counterparties to avoid having to reconcile non-material terms. None of the commenters wanted the Commission to keep § 23.500 as it was. Additionally, none of the commenters suggested that the Commission do less than was proposed to reduce the burdens associated with portfolio reconciliation exercises. All four commenters urged the Commission to further reduce the scope of terms that must be reconciled for discrepancies than what had been suggested in the Proposal.

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<sup>9</sup> The Proposed Excluded Data Fields modified the No-Action Excluded Data Fields by: (1) amending the execution timestamp data field to be specific to cleared swaps; (2) amending the timestamp for submission to an SDR data field to be specific to cleared swaps; (3) removing the data field containing an indication of whether the clearing requirement exception in CEA section 2(h)(7) has been elected with respect to an uncleared swap; and (4) removing the data field containing the identity of the counterparty electing the clearing requirement exception in CEA section 2(h)(7). The Commission proposed to retain those data fields for uncleared swaps as “material terms” because a discrepancy in this information in the records of the counterparties could mean that the related information is erroneous in the records of an SDR, which could have an impact on the Commission’s regulatory mission.

<sup>10</sup> Proposal, 80 FR at 57132.

<sup>11</sup> Id.

<sup>12</sup> These comment letters are on the Commission’s website at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1619>.

In particular, Chris Barnard of Germany stated that he supported “amending the definition of ‘material terms’ to not include terms that are not relevant to the valuation of swaps portfolios” and amending “§ 23.500(i)(1) so that counterparties only have to exchange the ‘material terms’ (which would not include the Proposed Excluded Data Fields) of swaps.”<sup>13</sup>

Likewise, the Japanese Bankers Association recommended that the Commission amend § 23.500(i)(1) so that swap counterparties only have to exchange the “material terms” of swaps, consistent with the Proposed Excluded Data Fields.<sup>14</sup> The Japanese Bankers Association further stated that “[t]he removal of the data reconciliation requirement of the Proposed Excluded Data Fields will generate significant cost savings.”<sup>15</sup>

Additionally, consistent with the Proposal, Freddie Mac stated that it “believes that the Commission should continue to exclude the execution timestamp and [SDR] submission timestamp data fields with respect to non-cleared swap transactions from the definition of ‘material terms’ under 23.500(g) for purposes of compliance with the portfolio reconciliation requirements of 23.502.”<sup>16</sup>

In addition, ISDA commented that it believes that “[t]he data fields that need to be exchanged and those which need to be reconciled should be the same” in that “[t]hese should only include data fields which were agreed upon between the parties as a term of

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<sup>13</sup> See Letter from Chris Barnard (Nov. 17, 2015), <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60560&SearchText=>.

<sup>14</sup> Letter from the Japanese Bankers Association (Nov. 16, 2015), <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60556&SearchText=>.

<sup>15</sup> *Id.*

<sup>16</sup> Letter from FreddieMac (Nov. 23, 2015), <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60563&SearchText=>.

the swap and [are] relevant to the mutual obligations of a swap.”<sup>17</sup> ISDA agreed with the exclusion of the Proposed Excluded Data Fields for purposes of portfolio reconciliation but believes that the Commission should further expand the list of excluded items. ISDA suggests that the Commission define, “material terms,” such that it would be limited to the primary economic terms of a swap, minus 25 specific data elements referenced in Appendix A to ISDA’s comment letter.<sup>18</sup> The data elements in question are otherwise required to be reported under Part 45, but are not, according to ISDA, relevant to the mutual obligations and valuation of swaps.<sup>19</sup>

ISDA’s 25 recommended excluded terms are the following:

1. An indication of whether the reporting counterparty is a SD with respect to the swap;
2. An indication of whether the reporting party is an MSP with respect to the swap;
3. If the reporting counterparty is not an SD or a MSP with respect to the swap, an indication of whether the reporting counterparty is a financial entity as defined in section 2(h)(7)(c) of the Commodity Exchange Act (“Act”);
4. An indication of whether the reporting counterparty is a U.S. person;
5. An indication that the swap will be allocated;
6. If the swap will be allocated, or is a post-allocation swap, the legal entity identifier of the agent;
7. An indication of whether the swap is a post-allocation swap;

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<sup>17</sup> Letter from ISDA, at 4 (Nov. 20, 2015), <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60561&SearchText=>.

<sup>18</sup> Id. at 2.

<sup>19</sup> Id.

8. If the swap is a post-allocation swap, the unique swap identifier of the original transaction between the reporting counterparty and the agent;
9. An indication of whether the non-reporting counterparty is an SD with respect to the swap;
10. An indication of whether the non-reporting counterparty is an MSP with respect to the swap;
11. If the non-reporting counterparty is not an SD or an MSP with respect to the swap, an indication of whether the reporting counterparty is a financial entity as defined in section 2(h)(7)(c) of the Act;
12. An indication of whether the non-reporting counterparty is a U.S. person;
13. An indication that the swap is a multi-asset swap;
14. For a multi-asset swap, an indication of the primary asset class;
15. For a multi-asset swap, an indication of the secondary asset class(es);
16. An indication that the swap is a mixed swap;
17. For a mixed swap reported to two non-dually-registered swap data repositories, the identity of the other SDR (if any) to which the swap is or will be reported;
18. Block trade indicator;
19. Execution timestamp;
20. Timestamp for submission to SDR;
21. Clearing indicator;
22. Clearing venue;

23. If the swap will not be cleared, an indication of whether the clearing requirement exception in section 2(h)(7) of the Act was elected;

24. The identity of the counterparty electing the clearing requirement exception in section 2(h)(7) of the Act; and

25. Any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap.<sup>20</sup>

With respect to the twenty-fifth term, ISDA stated that such term was “[n]ot suitable for material terms reconciliation” because “[u]ndefined data fields cannot be reconciled between parties or supported by portfolio reconciliation.”<sup>21</sup>

### **III. Final Rule**

After careful consideration, the Commission has decided to finalize the rule by: (1) modifying § 23.500(i)(1) to define “portfolio reconciliation” as, inter alia, any process by which the two parties to one or more swaps exchange the material terms of all swaps in the swap portfolio between the counterparties, and (2) modifying § 23.500(g) to define “material terms” to mean the minimum primary economic terms of a swap, as defined in appendix 1 of part 45 of the Commission’s regulations, other than the first 24 terms listed above.

After analyzing and considering the materiality of such terms, the Commission believes that the terms are not material for purposes of portfolio reconciliation exercises. Specifically, the Commission has determined that these 24 data fields: (i) pertain to static items about entering into the swap; (ii) pertain to static data fields about a party’s status; (iii) are only relevant to cleared transactions; (iv) are data which is not agreed,

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<sup>20</sup> Id.

<sup>21</sup> Id.



exchanged, or confirmed between the parties; or (v) are not relevant to the swap's daily valuation. The Commission also believes that the removal of these terms from reconciliations would alleviate the burden of resolving discrepancies in terms of a swap that are not relevant to the ongoing rights and obligations of the parties and the valuation of the swap without impairing the Commission's regulatory mission. The Commission's view of these "Excluded Data Fields" only applies to the "portfolio reconciliation" process and has no bearing on other obligations that counterparties must adhere to, such as, but not limited to, recordkeeping and reporting obligations. Thus the final rule would make the portfolio reconciliation process more efficient without harming the Commission's ability to regulate the market. Accordingly, the Commission has decided to adopt the 24 terms as the "Excluded Data Fields" to be listed in § 23.500(g)'s definition of material terms.

The twenty-fifth data field listed above—"[a]ny other term(s) of the swap matched or affirmed by the counterparties in verifying the swap"—is a provision that could include terms, unlike the 24 excluded terms above, that would be relevant to or affect the valuation of the swap or the ongoing rights and obligations of the counterparties.<sup>22</sup> Additionally, reconciling terms captured by this data field only covers terms that are matched or affirmed by the counterparties in verifying the swap, and terms that are matched or affirmed by the counterparties must, in any event, be memorialized and recorded, thereby providing a basis for counterparties to know which data fields must

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<sup>22</sup> For example, the Commission has stated that this field could include terms such as an "early termination option clause" in an interest-rate swap. See Exhibit C in appendix 1 to part 45; see also Exhibit C to appendix 1 to part 45 (listing the minimum primary economic terms data for foreign exchange transactions other than cross-currency swaps, and stating that the field for any other term(s) of the swap matched or affirmed by the counterparties in verifying the trade would include, for options, premium, premium currency, premium payment date; for non-deliverable trades, settlement currency, valuation (fixing) date; indication of the economic obligations of the counterparties).

be included in portfolio reconciliation exercises. Accordingly, the Commission is not persuaded that the twenty-fifth data field is ambiguous and has determined not to exclude it from the definition of material terms.

The Commission will, however, provide an additional measure of certainty to swap counterparties in the final rule by modifying the definition of “material terms” in § 23.500(g) to mean the minimum primary economic terms as defined in appendix 1 of part 45 of the Commission’s regulations (as opposed to meaning the primary economic terms more generally, without reference to the minimum terms enumerated in appendix 1), minus the Excluded Data Fields. Under this approach, market participants looking for the list of terms or data fields that must be exchanged during portfolio reconciliation exercises can look to the tables in appendix 1 to part 45 (minus the 24 Excluded Data Fields), which primarily feature concrete terms.

With these modifications to the existing regulations, the final rule will make it such that the terms that must be exchanged during portfolio reconciliation exercises will be identical to the terms that have to be resolved for discrepancies, both of which will be reduced from what was required under the regulations as originally promulgated. The Commission is finalizing the rule as such because the Commission believes that modifying the rule in this manner will provide for a streamlined and efficient portfolio reconciliation process that will continue to provide counterparties (and the Commission) with sufficient information about swap transactions. Accordingly, the Commission believes that the Final Rule will result in fewer “false positives” and provide for an overall more effective portfolio reconciliation process.

#### **IV. Administrative Compliance**

##### **A. Regulatory Flexibility Act**

The Regulatory Flexibility Act<sup>23</sup> requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis reflecting the impact. For purposes of resolving any discrepancy in material terms and valuations, the final rule amends the definition in § 23.500(g) of the Commission regulations so that the term “material terms” is defined as the minimum primary economic terms of a swap other than the 24 Excluded Data Fields. In connection with portfolio reconciliation, § 23.500(i)(1) requires counterparties to exchange the material terms of all swaps, which is now consistent with § 23.500(i)(3), which requires counterparties to resolve any discrepancy in “material terms” and valuations. As a result of the change to the definition of “material terms” in § 23.500(g) of the Commission regulations, SDs and MSPs will not be required to include the 24 Excluded Data Fields in portfolio reconciliations. Accordingly, counterparties also will not have to resolve discrepancies of material terms or valuations in connection with the 24 Excluded Data Fields. The Commission has previously determined that SDs and MSPs are not small entities for purposes of the Regulatory Flexibility Act.<sup>24</sup>

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<sup>23</sup> 5 U.S.C. 601 *et seq.*

<sup>24</sup> Policy Statement and Establishment of Definitions of “Small Entities” for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18619 (Apr. 30, 1982). The Regulatory Flexibility Act is limited to direct impact to small entities and not on indirect impacts on these businesses, which may be tenuous and difficult to discern. *See Mid-Tex Elec. Coop., Inc. v. FERC*, 773 F.2d 327, 340 (D.C. Cir. 1985); *Am. Trucking Assns. v. EPA*, 175 F.3d 1027, 1043 (D.C. Cir. 1985). Nonetheless, the Commission notes that any financial end-users that may be indirectly impacted by the proposed rule are likely to be eligible contract participants, and, as such, they would not be small entities. *See* Opting Out of Segregation, 66 FR 20740, 20743 (Apr. 25, 2001).

Thus, for the reasons stated above, the Commission believes that the amendments to the definitions of “material terms” and “portfolio reconciliation” will not have a significant economic impact on a substantial number of small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the regulations in this Federal Register release will not have a significant economic impact on a substantial number of small entities.

## **B. Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (“PRA”)<sup>25</sup> imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

In connection with the proposal, the Commission anticipated that, if adopted the Final Rule would require an amendment to existing collection of information OMB Control Number 3038-0068 with respect to the collection of information entitled “Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants.”<sup>26</sup> The Commission therefore submitted this proposal to the Office of Management and Budget (OMB) for review. The Commission previously had discussed, for purposes of the PRA, the burden<sup>27</sup> that the regulation

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<sup>25</sup> 44 U.S.C. 3501 *et seq.*

<sup>26</sup> See OMB Control No. 3038-0068,

<http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0068>.

<sup>27</sup> “For purposes of the PRA, the term ‘burden’ means the ‘time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal Agency.’” Portfolio Reconciliation Final Rule, 77 FR at 55959.

mandating, inter alia, portfolio reconciliation would impose on market participants.<sup>28</sup> In particular, the Commission estimated the burden to be 1,282.5 hours for each SD and MSP, and the aggregate burden for SDs and MSPs – based on a then-projected 125 SDs and MSPs – was 160,312.5 burden hours.<sup>29</sup>

The final rule amends the definition in § 23.500(g) of the Commission regulations so that the term “material terms” means the minimum primary economic terms of a swap other than the 24 Excluded Data Fields.<sup>30</sup> As noted above, under the final rule, clause (1) of the definition of “portfolio reconciliation” in § 23.500(i) requires the parties to exchange the material terms of all swaps between them and clause (3) of § 23.500(i) requires parties to resolve any discrepancy in “material terms” and valuations. The change will clarify that SDs and MSPs are not required to include the 24 Excluded Data Fields in portfolio reconciliations or in any resolution of discrepancies of material terms or valuations.

As discussed above, the final rule reduces the number of “material terms” that counterparties are required to exchange and resolve for discrepancies during portfolio reconciliations, but will not eliminate the overall portfolio reconciliation requirement itself. The Commission stated that it believed that the Proposal would reduce the time burden for portfolio reconciliation by one burden hour for each SD and MSP, which would reduce the annual burden to 1,281.5 hours per SD and MSP. The Commission stated that it believed that the Proposal would result in one hour of less work for

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<sup>28</sup> Portfolio Reconciliation Final Rule, 77 FR at 55958-60.

<sup>29</sup> Portfolio Reconciliation Final Rule, 77 FR at 55959.

<sup>30</sup> As noted earlier, the final rule is amending the definition of the term, “material terms,” at § 23.500(g) to exclude 24 data fields that will not be considered “material terms” for the purposes of “portfolio reconciliation” as that term is defined in § 23.500(i)(3).

computer programmers for SDs and MSPs because the programmers who have to match the needed data fields from two different databases would have fewer data fields to obtain and resolve for discrepancies. In the Proposal, the Commission estimated that, given that there are 106 provisionally registered SDs and MSPs, the proposed amendment would result in an aggregate burden of 135,839 burden hours if adopted. The final rule, however, will reduce the time burden on SDs and MSPs even more than what was included in the proposal, and there is one less provisionally registered MSP. In light of the fact that the final rule will remove 24 data fields entirely from portfolio reconciliations, and based on a total of 105 (as opposed to 106) provisionally registered SDs and MSPs, the Commission believes that the final rule will reduce the time burden for portfolio reconciliation by approximately eight burden hours for each SD and MSP, which would reduce the annual burden to 1,274.5 hours per SD and MSP, with an aggregate burden of 133,822.5. In the Proposal, the Commission invited the public and other Federal agencies to comment on any aspect of the reporting burdens discussed above, but did not receive any such comments.

### **C. Considerations of Costs and Benefits**

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the Act or issuing an order. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other

public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

1. Background

The Commission believes that, while portfolio reconciliation generally helps counterparties to manage risk, commentators were persuasive in their arguments that portfolio reconciliation should only involve exchanging and resolving discrepancies in material terms, and that material terms should not include the 24 Excluded Data Fields mentioned above. The Commission has been convinced that exchanging the 24 Excluded Data Fields does not improve the management of risks in swaps portfolios. By eliminating the requirement to exchange data fields that do not impact the valuation of the swap or the payment obligations of the counterparties and thereby reducing the number of data fields that parties must resolve for differences in portfolio reconciliation exercises, the Commission believes the final rule will decrease the costs that its current regulations impose on SDs and MSPs (and their counterparties) without a concomitant reduction in the benefits obtained from portfolio reconciliation exercises under the existing regulatory framework, as described below.

For purposes of considering the costs and benefits of the final rule, the Commission has used its current rules as the baseline. Currently, counterparties to swap transactions must exchange certain data elements for each swap, and then compare these and validate each element, even where the element is not relevant to the valuation of the swap or the payment obligations of the counterparties. The final rule circumscribes this process to include only those data elements that are relevant on an ongoing basis to the valuation of the swap or the payment obligations of the counterparties. Accordingly, the

Commission does not believe the final rule will impose any new costs on SDs, MSPs, or their counterparties.

## 2. Costs

Rather, as described below, the Commission believes that, in the aggregate, the final rule will decrease the costs that its regulations impose on SDs and MSPs (and their counterparties) because it would eliminate the requirement to exchange and resolve discrepancies in swap terms that remain constant (or that do not impact the valuation of swaps or the payment obligations of the counterparties) and thereby reduce the number of data fields requiring particular attention in portfolio reconciliation exercises.

The Commission does not believe the final rule will impair the Commission's ability to oversee and regulate the swaps markets. Portfolio reconciliation is designed to enable counterparties to understand the current status or value of swap terms. Because the Commission's proposal only is removing terms from the general portfolio reconciliation process that are not critical to the valuation of the swap or to the ongoing obligations of the counterparties, it will not negatively impact the amount of information available to the Commission about swaps. The Commission believes that this final rule will reduce SDs,' MSPs,' or their counterparties' costs of complying with Commission regulations because it will reduce the number of terms that counterparties must exchange during portfolio reconciliations.

## 3. Benefits

The Commission believes that the final rule will reduce the annual burden hours for each SD and MSP by four hours, resulting in a total of 1,278.5 hours, which leads to an aggregate number, based on 105 registrants, of 134,242.5 burden hours. The



Commission previously estimated that, assuming 1,282.5 annual burden hours per SD and MSP, the financial cost of its regulations on each SD and MSP would be \$128,250.<sup>31</sup> Therefore, based on those prior estimates, an eight-hour reduction in the annual burden hours for each SD and MSP would result in a financial cost of \$127,450 per registrant. Accordingly, the Commission estimates that the aggregate financial burden of its regulations on the 105 provisionally registered SDs and MSPs would be \$13,382,250.<sup>32</sup>

In addition, the Commission believes that the final rule benefits SDs, MSPs, and their counterparties because it will enable them to focus on reconciling data fields that actually impact the valuations of swaps and the obligations of the counterparties. Potentially, this change will enable the portfolio reconciliation process to be more efficient without reducing its usefulness as a risk management tool.

#### 4. Section 15(a)

Section 15(a) of the Act requires the Commission to consider the effects of its actions in light of the following five factors:

##### a. Protection of Market Participants and the Public

For the reasons discussed above, the Commission believes that, notwithstanding its decision to remove the 24 Excluded Data Fields from the list of material terms that counterparties must exchange during portfolio reconciliations, its regulations will continue to protect market participants and the public.

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<sup>31</sup> Portfolio Reconciliation Final Rule, 77 FR at 55959.

<sup>32</sup> Previously, the Commission had estimated that, if 125 entities had registered as SDs and MSPs, the aggregate burden would be \$16,031,250. Id.

b. Efficiency, Competitiveness, and Financial Integrity of Markets

For the reasons discussed above, the Commission believes that the final rule will increase resource allocation efficiency of market participants engaging in reconciliation exercises without increasing the risk of harm to the financial integrity of markets.

c. Price Discovery

For the reasons discussed above, the Commission did not identify any impact on price discovery as a result of the proposed regulation, and did not believe there would be one, but sought comment as to any potential impact. The Commission did not receive any comments on this issue. Accordingly, the Commission continues to believe the final rule will not impact price discovery.

d. Sound Risk Management

For the reasons discussed above, the Commission believes that the final rule is consistent with sound risk management practices because the regulatory change will not impair an entity's ability to conduct portfolio reconciliations.

e. Other Public Interest Considerations

The Commission did not identify any other public interest considerations, but welcomed comment on whether the proposal would promote public confidence in the integrity of derivatives markets by ensuring meaningful regulation and oversight of all SDs and MSPs. The Commission did not receive any comments about this issue.

List of Subjects in 17 CFR Part 23

Authority delegations (Government agencies), Commodity futures, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 23 as set forth below:

**PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS**

1. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b-1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

2. In § 23.500, revise paragraphs (g) and (i)(1) to read as follows:

§ 23.500 Definitions.

\* \* \* \* \*

(g) Material terms means the minimum primary economic terms (as defined in Appendix 1 of part 45 of this chapter) of a swap other than the following:

- (1) An indication of whether the reporting counterparty is a swap dealer with respect to the swap;
- (2) An indication of whether the reporting party is a major swap participant with respect to the swap;
- (3) If the reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty is a financial entity as defined in section 2(h)(7)(c) of the Act;
- (4) An indication of whether the reporting counterparty is a U.S. person;
- (5) An indication that the swap will be allocated;
- (6) If the swap will be allocated, or is a post-allocation swap, the legal entity identifier of the agent;
- (7) An indication of whether the swap is a post-allocation swap;

(8) If the swap is a post-allocation swap, the unique swap identifier of the original transaction between the reporting counterparty and the agent;

(9) An indication of whether the non-reporting counterparty is a swap dealer with respect to the swap;

(10) An indication of whether the non-reporting counterparty is a major swap participant with respect to the swap;

(11) If the non-reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty is a financial entity as defined in section 2(h)(7)(c) of the Act;

(12) An indication of whether the non-reporting counterparty is a U.S. person;

(13) An indication that the swap is a multi-asset swap;

(14) For a multi-asset swap, an indication of the primary asset class;

(15) For a multi-asset swap, an indication of the secondary asset class(es);

(16) An indication that the swap is a mixed swap;

(17) For a mixed swap reported to two non-dually-registered swap data repositories, the identity of the other swap data repository (if any to which the swap is or will be reported);

(18) Block trade indicator;

(19) Execution timestamp;

(20) Timestamp for submission to swap data repository;

(21) Clearing indicator;

(22) Clearing venue;

(23) If the swap will not be cleared, an indication of whether the clearing requirement exception in section 2(h)(7) of the Act was elected; and

(24) The identity of the counterparty electing the clearing requirement exception in section 2(h)(7) of the Act.

\* \* \* \* \*

(i) \* \* \*

(1) Exchange the material terms of all swaps in the swap portfolio between the counterparties;

\* \* \* \* \*

Issued in Washington, DC, on May 2, 2016, by the Commission.

Robert N. Sidman,

Deputy Secretary of the Commission.

NOTE: The following appendices will not appear in the Code of Federal Regulations.

**Amendments to the Definitions of “Portfolio Reconciliation” and “Material Terms”  
for Purposes of Swap Portfolio Reconciliation – Commission Voting Summary and  
Commissioner’s Statement**

**Appendix 1 – Commission Voting Summary**

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

## **Appendix 2 – Statement of Commissioner J. Christopher Giancarlo**

I support the final rule amending the definitions of portfolio reconciliation and material terms for purposes of swap portfolio reconciliation. I commend the Commission and Division of Swap Dealer & Intermediary Oversight staff for replacing no-action relief with a rulemaking subject to a cost-benefit analysis and the notice and comment requirements of the Administrative Procedure Act.

In the proposal I raised two concerns. First, I questioned the logic of the proposed rule to require the exchange of all terms throughout the life of a swap as part of a portfolio reconciliation exercise, but then require reconciliation of only the material terms. I am pleased that the Commission has amended the definition of portfolio reconciliation to require the exchange of material terms so that the terms that must be exchanged are the same as those that must be reconciled.

Second, I questioned the logic of the proposed rule to treat as material terms, and thus require the reconciliation of, data fields that will not change over time, such as execution timestamp and timestamp for submission to a swap data repository. I am also pleased that the Commission has revised the definition of material terms to mean the minimum primary economic terms as defined in appendix 1 of part 45 of the Commission's regulations and to exclude several additional data fields that are not relevant to the ongoing rights and obligations of the parties and the valuation of the swap.

The final rule streamlines the portfolio reconciliation process and reduces costs for market participants without undermining the Commission's objectives for portfolio reconciliation. The final rule is much improved from the proposal so I am pleased to support it.

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